K 1949.

File No. O. Evacuees 49.

Legal Department.

A **BRANCH**

Subject:—

Opinions under the Bombay Evacuees (Administration of Property) Act 1949

55 (E)

File No. O. Evacuees (Admn. of Property)/49.

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CONTENTS.

Legal Department File No.0.Evacuees (Admn.of Property)/49.

Sr. No.	R.I./ O.No.	Subject.	Pages.
		Bombay Evacuees (Administration of Property) Act, 1949. Sec.4 -	
1.	7259 30-6-49	Whether an agreement, taken before the Act came into force, to sell the property is itself void.	1-2
2.	8944 9-8-49.	Section 14 — Whether on return from Pakistan an evacuee does not cease to be an evacuee.	3-4
3.	9374 20-8-49	Section 2(b) — Definition of an evacuee.	5-6
4.	430-Confl. 13-7-49.	Sections 2(b)(1) & 2(b)(2) — Whether it is legal to declare an evacuees property to be an evacuee property after his return.	7-
5.	9367 31-8-49	Section 2(f) - Whether title deeds are property.	9-11
6.	541-Confl. 25-8-49	Sec.2(b) — Whether there would be any objection to treating a person as an evacuee if he wants to settle in Karachi.	13-14
7.	9598 25-8-49.	Section 2(b)(1) — Interpretation of —	15-
8.	9477 23-8-49	Section 2(b) — Whether Mr.Zulfikharally is an evacuee..	17-

Sr.No.	R.I./O.No.	Subject.	Pages.
9.	574-Confl. 10-9-49.	Section 2(b)(2) — Whether Mr.'X' can be considered an evacuee within the meaning of the Act. ...	19-21
10.	9675 26-8-49.	~~Section 2(b)(ii)~~ Section 2(b)(ii). Whether the Nawabzada can be treated as an evacuee and whether Government's final decision under the explanation to the above section is necessary. ...	23-25
11.	10268 12-9-49	Section 2(6) — Whether Mr.'X' is an evacuee if he is prosecuting his studies in Pakistan.	27-28
12.	567-Confl. 7-9-49.	Bank's claim for securities deposited with it which vest in the custodian — Preferring a claim to custodian.	
13.	642-Confl. 17-10-49.	Section 2(b)(3) — Whether Mr.'X' holding evacuee property in Pakistan is an evacuee.	31-
14.	10667 21-9-49	Salient features of the law of succession under the Mohammadan law.	33-35
15.	11027 30-9-49	Section 8 — Evacuee beneficiaries — Whether the right would vest in the custodian.	37-39
16.	11470 ~~30-9-49~~ 14-10-49	Section 2(2)(b) — Whether Mr.'X' who went to Karachi and came to India on a temporary permit for 2 months would be an evacuee.	41-43

Sr. No.	R.I. / O. No.	Subject.	Pages.
17.	11676 19-10-49	Section 2(b)(1) — Whether the family of the deceased is an evacuee family when they have returned and settled in India.	45-
18.	13250 21-11-49	Section 2(e) (iii) — Definition of an "intending evacuee" —	47-
19.	13638 28-11-49	Section 2(d)(iii) — Whether Mr.'X' would come within the sub-clause mentioned above.	49-
~~20.~~	~~13838~~ ~~28-11-49~~	~~Section 2(d)(iii) — Whether Mr.'X' would come within the sub-clause mentioned above.~~	
20.	9188 13-8-49,	Sections 4(2) and 2(b)(iii) — Whether Mr.'X' can be treated an evacuee and the properties which he has been trying to dispose of can be notified as evacuee property.	51-53
21.	13867 1-12-49	Section 4(2) — Whether Government should agree to allow the mortgagee to enter into possession of property. ...	55-56
22.	13799 30-11-49	Section 2(d)(ii) Whether Mr.'X' is an evacuee within the meaning of the section.	57
23.	760-Confl. 6-12-49	Evacuee Property Ordinance 1949 - Sections 24 & 25. Whether power to entertain applications vests in Government.	59-

Sr. No.	R. I./ O. No.	Subject.	Pages.
24.	766-Confl. & 9-12-49.	Section 38(2) — Declaring certain properties as evacuee property.	61-65.
25.	12706 10-11-49	Section 2(d) — Definition of evacuee property.	67-
26.	564-Confl. 6-9-49.	Section 2(6) — Whether Government is bound to hear the aggrieved party before deciding question.	69-71
27.	576-Confl. 10-9-49.	Section 2(6) — Whether minors leaving Indian for studies are evacuees.	73-75
28.	696-Confl. 12-11-49	Evacuee Ordinace 1949 — Sections 2(f), 4, 7 etc. Whether the property once decided as an evacuee property vests in Govt.	79-
29.	10657 20-9-49	The principle of ejusdem generis. Interpretation of —	81-83
30.	13124 18-11-49	Sections 2(f), 7, 8 and 38 — Whether securities held by the bank in the name of Mr.'X' who is the resident of Pakistan are evacuee properties.	85-87
31.	13626 28-11-49	Sections 7,24 and 25 — Whether the applications of Mr.'X' should be treated as appeals against the orders and whether they would be to the District Judge designated in this behalf by the Government.	89-93.

Epp. 69-70 not type

Epp. 89-90 not type

MRP.
6/6/56.

9/6
K.S.R.
9/6

Legal Department.

In this case an agreement to sell the property appears to have taken place before the Bombay Evacuees (Administration of Property) Act, 1949 came into force operation. Such agreement will not by itself be void. Under section 4 of the Act all evacuee property vests in the Custodian for the purposes of the Act. When under section 6 the Custodian would assume control of such property, every holder of such property shall be deemed to be holding on behalf of the Custodian. Section 11 allows the Custodian even to sell such property. The agreement to sell in the present case does not by itself, under section 54 of the Transfer of Property Act, pass any property to the would-be purchaser. It will have to be followed by a final sale or conveyance. Under sub-section (1) of section 8 of the Bombay Evacuees (Administration of Property) Act, 1949 no sale of any property or any interest or right in or over any property made by any evacuee or by the agent, assignee or attorney of the evacuee on or after the date on which that Act comes into force shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian. Under sub-section (2) an application for confirming such transfer may be made by any person claiming thereunder or by any person lawfully authorized by him. Under sub-section (4) the Custodian has to hold a summary inquiry into the application, and authority has been given to the Custodian to decline to confirm the transaction. In order to prevent any further dealing with the property of Khan Bahadur Abdul Kadar who has been declared to be an evacuee, it is desirable that the Custodian

should

should notify the property under section 4(2) and should proceed to assume control over the same. The completion of the sale would then become impossible and in the absence of an express provision to the contrary in the agreement Khan Bahadur Abdul Kadar will have to return the earnest money he may have received.

Sd. J.R.Dhurandhar
30/6
Additional Secretary to Government.

U.R.to P.& S.D. No.7259, dated 30th June 1949.

MRP.
6/6/56.

Legal Department.

These papers are referred to this Department for advice as to whether the position stated at 'A' and 'B' on page 3 and at 'C' on pages 5 and 6 ante is legally correct.

2. The position is correctly stated at 'A' on page 3. On the return from Pakistan an Evacuee does not automatically cease to be an evacuee and become entitled to the return of his property, even though he has permanently returned to India. The evacuee property to ~~which~~ which he is entitled can be restored to him under section 14 of the Act after following the procedure laid down in that section.

3. The Pakistan Act referred to at page 3 ante is not available. Pakistanee Ordinance obtained from the Rehabilitation Department (which presumably became an Act in due course) defines "evacuee property" as meaning the property in Pakistan owned by an evacuee or vesting in him under any trust or instrument and includes property in Pakistan obtained for an evacuee by lease, sale or exchange on or after the 1st August 1947. Section 6 of the Ordinance empowers the Custodian to make an order for taking over or assuming control of evacuee property. Sub-section (5) of that section empowers the Central Government to vest prescribed evacuee property in the Custodian. It is no where laid down in the Ordinance that any property owned or vesting in an evacuee becomes an evacuee property only after an Order is issued by the Custodian under section 6 or it is vested in him by the Central Government. The

provisions of

provisions of section 2(b)(3) of the Bombay Evacuee (Administration of Property) Act, 1949 will be attracted as soon as it is found that right to, interest in, or benefit from any property which is an evacuee property within the meaning of the Pakistan Law has been acquired by any person.

4. Under sub-section (1) of section 4 of the Bombay Act all evacuee property within the Province vests in the Custodian. Sub-section (2) of the section requires the custodian to notify evacuee properties vested in him but the vesting of the evacuee property in the custodian does not depend upon such notification which is apparently intended for the information of the public. The Custodian will therefore be entitled to recover from the owner of the evacuee property or his agent the proceeds of such property with effect from the date on which it is vested in him under sub-section (1) of section 4.

5. Other alterations which are necessary are made in the draft instructions.

Sd. J. R. Dhurandhar
6/8
Additional Secretary to Government.

U.R.to Rehabilitation Deptt.No.8944,dated the 9th August 1949.

MRP.
6/6/56.

L.D.,R.I.No.12341, dt. 11-8-49.

Submitted.

The Consul General for Lebanon has remarked in his letter to the Chief Secy. that as the Bombay Evacuees (Administration of Property) Act, 1949 is meant to apply to nationals of the Indian Dominion who may evacuate to the Dominion of Pakistan it cannot as such be applicable to a Lebanese National or a national of any other foreign state who may be residing and/or owing properties within the Province of Bombay. He has requested that the legal position as stated above by him should be confirmed. The Deputy Secretary, R.H.Department considers that the position stated by the Lebanese Counsul General is not correct. In his note dated 5-8-49 he states:

"The Bombay Evacuees Act is a jurisdictional piece of legislation and the fact that an individual is a citizen of the Lebanese or of any other country is immaterial, if his case otherwise attracts the provisions of the Act. The main provisions relate to the partition of the country and/or Civil disturbances or the fear of such disturbances. If a person has left India for these reasons or being resident in ~~a~~ Pakistan is unable for these reasons, to personally supervise his property he is an evacuee. Similarly, if a person owning property in India has drawn benefits from Evacuee property in Pakistan, he is to be treated as an evacuee under the

law

law. The only point to be considered in certain cases, especially of foreigners, is whether their departure from India after 1-3-1947 or their inability to manage properties from Pakistan is connected with the specified reasons."

The D.S., R.H.D. has requested L.D. to confirm this position.

A
The view taken by Deputy Secy., R.H. Deptt. is correct. An "evacuee" is defined in section 2(b) of the Act and nationality is immaterial for the purpose of applicability or otherwise of the Act to the person concerned (cf. R.L.A's opinion No.9188, dt. 13-8-1949).

Sd. N.P.Rege
18/8

A.L.R.

A-A may be the reply

Id. R.T.K.
18/8.

R.L.A.

Additional Sec. may also see.

Id. P.N.L.
18/8

I agree . Reply may be as suggested by A.L.R.

Id. J.R.D.
18/8.

U.R.to R.H.D.No.9374,dated 20-8-1949.

MRP.
6/6/56.

Legal Department.

The Bombay Evacuees (Administration of Property) Act, 1949.

Sections 2(b)(i) and 2(b)(2).

It is not sufficient to decide that a person is an evacuee. Under section 4(2) of the Bombay Evacuee Act, as amended by the recent Ordinance, it is necessary to declare that his property is evacuee property. If an evacuee returns, he is entitled to the return of the property. As in this case the person has returned to Bombay and is in a position to supervise his property personally, it will not be legal to declare his property to be evacuee property. It is stated that his stay in Bombay is temporary and he is likely to go to Canada. But until he leaves Bombay and takes his residence in Pakistan again, it will not be legal to declare his property to be evacuee property.

Sd. J.R.Dhurandhar
13/7
Additional Secretary to Government.

U.O.to Rehabilitation Department No.430-Confl., dated the 13th July 1949.

MRP.
6/6/56.

L.D.R.I.No.11976, dt. 4-8-49

Submitted.

The Chartered Bank of India, Australia and China has inquired whether Government securities, industrial shares, title deeds etc. which are held by their evacuee clients and deposited with the Bank for safe custody are "property" within the meaning of that term as defined in the Bombay Evacuees (Administration of Property) Act, 1949 and whether acting on the instructions of their clients they can sell the whole or part of such holdings and credit the proceeds to the current accounts of the clients.

The Rehabilitation Department has no difficulty about Government securities and shares and in fact a Press Note has been issued by the Department stating that shares are property within the meaning of section 2(f) and no transfer thereof can be effected except in accordance with section 8 of the Act. As regards title-deeds, the Deputy Secretary, Rehabilitation Department is, however, doubtful and therefore the matter is referred to the Legal Department for advice (vide D.S's note dated 26-7-49 at p.4 ante).

The question for R.L.A's consideration, therefore, is whether title-deeds would be covered by the term "property" as defined in section 2(f) of the Bombay Evacuees (Administration of Property) Act, 1949.

x x x x

Sd. N.P.Rege
24/8.

MRP.
6/6/56

Office of the R.L.A.

Whether title deeds are property..

Bombay Evacuees (Administration of Property) Act, 1949. Section 2(f).

Property as defined in clause (f) of section 2 of the Bombay Evacuees (Administration of Property) Act, 1949 means any movable or immovable property and includes any right in any actionable claim other than a mere right to sue. That there can be property in title deeds follows from the legal position which is well established in English law and which is not affected by the definition of actionable claim given in section 3 of the Transfer of Property Act that the right to property in title deeds when in the hands of third persons is a chose in action (Halsbury 2nd Edition Vol.4,p.425), and that action in detinue would lie for the return of title deeds (Ibid Vol.33 p.50). Title deeds can therefore be treated as movable property. The definition of movable property as given in the General Clauses Act, 1897 is wide enough for that purpose. Or they can be said to evidence a right to an actionable claim. On these grounds title deeds in ~~the~~would fall within the definition of property as given in the Bombay Evacuees (Administration of Property) Act, 1949.

Sd. P.M.Lad
30/8
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department,No.9867, dated the 31st August 1949.

MRP.
6/6/56.

Submitted.

Please see the letter from the Collector of the Deputy Custodian of Evacuee Property at pp.1-2 ante. The question for consideration is whether Mr. Kapurwala is an "evacuee" within the meaning of that term in the Bombay Evacuees (Administration of Property) Act, 1949.

The term "evacuee" is defined in section 2(b) and the persons who would fall under any of the following three categories are deemed to be evacuees:-

(1) Persons ordinarily resident in the Province who have left or leave it for a place outside India since 1st March 1947 on account of civil disturbances etc., or

(2) Residents of Pakistan who cannot or do not personally manage their properties in the Province on account of civil disturbances etc., or

(3) Persons who have derived interest in any "evacuee" property in Pakistan.

From the facts reported, it appears that Mr. Kapurwala has practically left his residence here and has gone to settle down in Karachi. The fact that he is selling away his properties here and buying properties and business in Pakistan is also indicative of his intention to leave the Province for good. Besides, he appears to have acquired right or interest in a perfumery shop owned by a Hindu in Karachi, by purchase or otherwise,

which

which presumably is "evacuee property" in Pakistan and in the circumstances, he would be an evacuee also under clause (b)(3) of section 2. There is, therefore, no objection to declare Mr.Kapurwala as an Evacuee" under section 2(b).

Sd. N.P.Rege
24/8

A.L.R.

Reply may be:

The circumstances mentioned by the Deputy Custodian of Evacuee Property in his letter at p.1 ante are clearly indicative of Mr.Kapurwala's intention to make Karachi his home; consequently there would be no legal objection to treating him as a resident of Pakistan. Government may pass a decision to that effect under the Explanation to sec.2(b) of the Bombay Evacuees (A. of P.) Act, 1949.

Id. R.T.K.
24/8.

R.L.A.

Id. P.M.L.
24/8.

U.R.to Rehabilitation Deptt.No.541-Confl., dated the 25th August 1949.

MRP.
6/6/56.

Office of the R.L.A.

Bombay Evacuees (Administration of Property) Act, 1949.

Sec.2(b)(1).

Whatever may be the intention of Mr. Kurmuzkhan in residing and acquiring the property in Bombay before the partition of India, the fact that after partition he left for Rawalpindi, his native place, and has since returned to Bombay on a temporary permit is enough to hold that he is not a resident of Bombay within the meaning of section 2(b)(1) of the Bombay Evacuees (Administration of Property) Act, 1949.

Sd. P.M.Lad
24/8
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Deptt.,No.9598, dated the 25th August 1949.

MRP.
6/6/56.

Office of the R.L.A.

Whether Mr. Zulfikarally is an evacuee.

Bombay Evacuees (Administration of Property) Act, 1949.

Section 2(b).

The view taken by the Deputy Custodian of Evacuee Property is correct.

A man cannot be without a residence nor can he have more than one residence at one and the same time. Admittedly Mr. Zulfikarally Khan Shah has no home in Bombay. The term "residence" is sometimes used as synonymous with the word "home". He has joined the California University for study and his residence in that University during the course of his study would be considered as mere temporary residence without affecting in any way his permanent residence. Admittedly he was born in Larkana, in Sind, where his father has property. His domicile of birth is in Pakistan. On return from America he went to Pakistan and his visit to Bombay is on a temporary permit. Consequently it can reasonably be assumed that he is a prson resident in Pakistan who cannot or does not by reason of his residence there persohally occupy or supervise his property or watch his interest within the Province of Bombay. The Provincial Government may issue a declaration under Explanation to section 2(b) of the Bombay Evacuees (Administration of Property Act, 1949, that the applicant is an evacuee.

Sd. P.M.Lad
22/8
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department, No.9477, dated the 23rd August 1949.

MRP.
6/6/56.

Office of the R.L.A.

Bombay Evacuee (Administration of Property) Act, 1949.

Section 2(b)(2).

One Mr. Mahomed Abdul Latif owns a business in Bombay. He has a factory known as Baghdad Soap Factory and his son is managing the factory on a pay of Rs.600 per month. Mr.Mahomed Abdul Latiff came to Bombay from Karachi on the 6th March 1940. He lived in Karachi for a year before the partition of India and before that he was in Bombay but made occasional visits to Iran. At the time of partition, he was admittedly in Karachi and since then he stayed in Karachi till his arrival in Bombay on 6th March 1949 on a permit. This permit, it appears, has been extended till 19th March 1950. His daughters, except one who is married in Bombay, are in Karachi where they stay in Mr.Mahomed Abdul Latif's House at Clifton. The question raised for the R.L.A's consideration is whether Mr.Latif can be considered an evacuee within the meaning of the Bombay Evacuees (Administration of Property) Act, 1949.

Under section 2(b)(2) of the Bombay Evacuees (Administration of Property) Act, 1949, an "evacuee" means a person resident in Pakistan but owning property or carrying on business in the territories comprised in the Province of Bombay who on account of civil disturbances or fear of such disturbances or the partition of the country or by reason of his residence in Pakistan cannot or does not personally occupy or supervise his property or carry on his business or watch his interest or enforce his rights within the Province. "Personal supervision" as defined in clause (d) means supervision or carrying on business, watching or enforcing as the

case may

case may be, under one's personal presence or by agents or servants under one's personal presence in the Province. The word "resident" has the same meaning as "inhabitant" and means one who dwells or resides permanently in a place (see Iyer's Law Lexicon). Mr. Mahomed Abdul Latif owns property in Pakistan and part of his family is residing there. He has come over to India on a temporary permit which clerly shows that he must have chosen to make Karachi his home. On the expiry of the permit, he is liable to be evicted from India. Consequently, his present residence in Bombay would be considered merely temporary residence. He would, therefore, be a resident in Pakistan within the meaning of section 2(b)(ii). It is true that his son has been managing the property but what is necessary under clause (d) is that such supervision must be under one's personal presence in the Province. So long as he is in Bombay it might be considered that the management of the property by his son is under his personal presence in the Province. But clause (d) defining "personal supervision" does not contemplate supervision temporarily under one's personal presence. The temporary personal presence of Mr.Abdul Latif would not, therefore, make the management by his son "personal supervision" within the meaning of section 2(b)(2). In the circumstances, there appears no objection to consider Mr.Abdul Latif an evacuee and an order under the Explanation to section 2(b) may be passed by Government.

Sd. P.M.Lad
9/9
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department No.574-Confl.,
dated the 10th September 1949.

MRP.
6/6/56.

Office of the R.L.A.

Bombay Evacuees (Administration of Property) Act, 1949.

Section 2(b)(ii).

It appears that Nawabzada Mir Sayad Alamkhan was born in Surat and joined Government service 1923. He served in various capacities in the Political Department of the Government of India till December 1947. On the partition of India, he opted for India and served for some time and thereafter, owing to his failing health, he retired from service. He came down to Bombay and as he had no accommodation of his own, he purchased a piece of land for Rs.1 lakh and has since invested considerable amount in constructing a building thereon. The building is not yet complete and he with his wife is staying in a hotel. He owns Model Talkies, Kurla which he has mortgaged for Rs.3 lakhs and in respect of which a suit is pending. Treating him to be an evacuee the Custodian of Evacuee Property has issued a notification under section 4 notifying the Model Talkies, Kurla, as evacuee property. The Nawabzada has now applied to the Custodian of Evacuee Property for releasing his property contending that he is not an evacuee at all and that he is a resident of Bombay. The Deputy Custodian of Evacuee Property in his letter dated the 25th July 1949 to the Dy. Secy. to Govt., Rehabilitation Deptt. and Custodian of Evacuee Property, has expressed the view that the Nawabzada can be considered as an evacuee for the following reasons:

"The

"The Nawabzada after retirement was in a nursing home in Bombay for 8 months. During the material period from September 1948 to the 17th May 1949 after he left the nursing home he and his wife were away from November 1948 to January or February 1949 and from 28th April to 28th June 1949 add had gone to Pakistan. They stayed much longer in Karachi than in Bombay during this period. The Nawabzada has no links with India except his property and pension and has no home. His son is in the Pakistan army, his two daughters are in Karachi and their husbands are in the Pakistan army. His third daughter also lives in Karachi. His wife's sister is married to Abdul Kadar Mahomed Hussein, and they have settled down in Karachi. The Nawabzada may possibly have had an intention of making Bombay his home in January 1948 when he bought the property, but x this may well have been before his son and sons-in-law entered the Pakistan army. His wife has admitted that they have obtained a permanent permit from the Pakistan authorities to enter Pakistan - afact which is very significant." R.L.A. is requested to advise whether the Nawabzada can be treated as an evacuee and whether Govt's final decision under the Explanation to section 2(b)(ii) of the Bombay Evacuees (Administration of Property) Act, 1949, is necessary.

It appears from the facts stated by the

Deputy --

Deputy Custodian of Evacuee Property that it would be difficult to hold Nawabzada Mr.Sayyad Alamkhan to be an evacuee. Admittedly he was born in Surat. Till the partition of India he as in the services of the Central Government and after partition he opted for India - fact which is very significant in deciding the "animo et facto" of Nawabzada. Immediately after his retirement he came down to Bombay and began to reside. The fact that he had no accommodation of his own as a consequence of which he was forced to stay in a hotel would not make any difference. If he had no intention to reside in Bombay, he would not have purchased a land and invested considerable amount for erecting a building. It is true that after he recovered from his illness and left the nursing home, he went to Pakistan twice and stayed there for some month which when compared with his actual stay during the period may happen to be longer. But what is necessary to decide,as stated by the Deputy Custodian in his letter, is the "animo et facto". His son and sons-in-law may be in Pakistan army and he may have no link with India. But the fact remains that he was born in Surat and he opted for India whereafter he has chosen to reside in Bombay and has invested considerable amount in purchasing a property. All these facts would lead to an irresistible conclusion that the Nawabzada must have decided to make Bombay his home, and until he changes his mind of which there is no definite proof, he will have to be treated as a resident of Bombay. Consequently, the Nawab zada cannot be treated as an evacuee within the meaning of the Bombay Evacuees (Administration of Property) Act, 1949.

Sd. P.M.Lad 25/8
Remembrancer of Legal Affairs.
U.R.to Rehabilitation Deptt.,No.9675,dated 26-8-1949.

MRP.
6/8/56

Office of the R.L.A.

Bombay Evacuees (Administration of Property) Act, 1949.

Section 2(b).

It appears that the Collector of Bombay has notified under the Bombay Evacuees (Administration of Property) Act, 1949, one-third share of one Mr. Hussein Kassam in the firm of Ebrahim Kassam on the ground that he is an evacuee. Against this order a representation has been made contending that Mr. Hussein Kassam is not an evacuee and that, although he has come to India on a temporary permit, he does not propose to go back as his property is here. The Deputy Secretary, Rehabilitation Department, considers that Mr. Hussein Kassam is an evacuee and the fact that he was prosecuting his studies at Karachi was immaterial. The R.L.A. is requested to advise.

Admittedly Mr. Hussein Kassam has returned to India on a temporary permit. It is not known whether he applied in Form A or Form B appended to the Permit System Rules, 1949. If it be in the latter form, it is clear that Mr. Hussein Kassam must have declared that he is a resident of Pakistan, in which case it would not now be open to him to contend that he is a resident of Bombay. If, however, the application were in Form A, it would be clear that he was not previously a permanent resident of the territories now comprised in the Dominion of India. This means that he is not a resident in the territories comprised in the Bombay Province and the fact that he has come over here on a temporary permit would clearly show that on account of civil disturbances or the fear of such disturbances or the partition of the country, or by his residence in Pakistan he is unable to personally occupy or

supervise

or supervise the property or carry on his business, etc., within the meaning of sub-clause (2) of clause (b) of section 2 of the Bombay Evacuees (Administration of Property) Act, 1949. Consequently, there would be no legal objection to treating Mr.Hussein Kassam as an evacuee and an order may be passed by Government under the Explanation to section 2(b).

Sd. P.M.Lad
10/9
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department No.10268, dated the 12th September 1949.

MRP.
7/6/56.

Office of the R.L.A.

Bombay Evacuees (Administration of Property) Act, 1

Bank's claim for securities deposited with it which vest in the Custodian.

The shares, securities and stocks whether deposited with the Banks for safe custody or pledged against advances or overdrafts, would vest in the Custodian and if the Bank has any claim against these securities, it will have to prefer a claim to the Custodian all transactions in respect of the stocks and other actionable claims after the date of the Actm, unless confirmed by the Custodian, would be void. The view taken by the Deputy Secretary, Rehabilitation Department, is correct.

Sd. P.M.Lad
6/9
Remembrancer of Legal Affairs.

U.R.to Rehabilitati-on Department, No. 567-Confl., dated the 7th September 1949.

MRP.
7/6/56.

Office of the R.L.A.

The fact that Mr. Hussanally P. Ibrahim has acquired the evacuee property in Pakistan is sufficient to hold him to be an evacuee under section 2(b)(3) of the Bombay Evacuees (Administration of Property) Act, 1949, and Government may decide accordingly under the Explanation to section 2(b).

Sd. P.M.Lad
15/10
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Deptt.,No.642-Confl., dated the 17th October 1949.

MRP.
7/6/56.

Office of the R.L.A.

Bombay Evacuee (Administration of Property) Act, 1949.

Mahomedan Law of Succession.

It would be difficult for the R.L.A. to express any definite opinion on hypothetical issues. It would be desirable that the facts of each case should be stated clearly to enable the R.L.A. to express his opinion. However, so far as the law of succession under the Mohammedan law is concerned, the following salient may be noted:

"The whole estate of a deceased Mohammedan if he has died intestate, or so much of it as has not been disposed of by will if he has left a will, devolves on his heirs at the moment of his death and the devolution is not suspended by reason merely of debts being due from the deceased. The heirs succeed to the estate as tenants in common in specific shares. Any heir may, even before distribution of the estate, transfer his own share and pass a good title to a bona fide transferee for value notwithstanding any debts that might be due from the deceased. Since the estate devolves on the heirs at the moment of the death of the deceased, they are at liberty to divide it at any time after the death of the deceased. There is no birth-right recognised under the Mohammedan law, nor is there any distinction in the Mohammedan law of inheritance between moveable and immoveable property or between ancestral and self-acquired property. A vested inheritance is the share which vests in an heir at the moment of the ancestor's death. If the heir dies before distribution, the share of inheritance which is vested in him will pass to such persons as are his heirs at the time of his death. The shares, therefore, are to be determined at each death. When the members of a Mohamedan family live in commensality, they do not go to form a joint family in the sense in which that expression is used in the Hindu law. Furtherm, in the Mohammedan law there is not, as in the Hindu law, any presumption that the acquisitions of the several members of a family living and messing together are for the benefit of the family. But if, during the continuance of the family, properties are acquired in the name of a managing member of a family and it is provided that they are possessed by all the members jointly, the presumption is that they are properties of the family and not the separate properties of the member in whose name they stand. If, after the death of a Mohammedan his adult sons continue their father's business and retain his assets in the

business

> business, they will be deemed to stand in a fiduciary relation to the other heirs of the deceased and liable to account as such for the profits made by the in the business. If, after the death of the sons the business is continued by their sons or by other heirs, they also will be liable to account on the same footing. The members of a Mohammedan family carrying on business jointly do not constitute a joint family firm in the sense in which that expression is used in the Hindu law so as to attract the legal incidence of such firm. Sons assisting a father in business are presumably his agents and are not his partners unless an agreement of partnership is proved."

In the light of the aforesaid observations, it should first be decided whether the Mohammedan who has evacuated for Pakistan is the sole owner of the property in the Province of Bombay or is a mere sharer. In the latter case, such share would vest in the Custodian of Evacuees Property, while in the former case, the whole property would vest in him.

Sd. P.M.Lad
20/9
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department No.10667,
dated the 21st September 1949.

MRP.
7/6/56.

Bombay Evacuees (Administration of Property) Act, 1949.
Section 8.

Where the Bank is a sole trustee and the income or corpus of the trust is held for the benefit of an evacuee beneficiary, the Bank as a trustee can exercise its power to invest the trust moneys and to vary and transfer such intestments. The same would be the case in respect of a trust in which the Bank exercises these powers as a co-trustee of an evacuee trustee because ths office of a trustee is a joint office and the fact that one trustee has become an evacuee would not in any wise make the trust-property evacuee property unless the exercise of the power also requires the concurrence of the evacuee trustee. It is, however, desirable in such cases that the Bank should get a new trustee appointed in the place of the evacuee trustee at the earliest possible opportunity so as to avoid complications. Every instrument of trust would ordinarily contain a provision for the appointment of a new trustee in the event of a trustee leaving India for the purpose of residing abroad or remaining absent from India for a continuous specified period. In case there is no such express provision the provisions of section 73 of the Trusteæ Act would apply.

The expression "property" has been defined in the Bombay Evacuees Act, 1949, and would include the beneficial interest of an evacuee beneficiary. Accordingly the beneficial interest of an evacuee beneficiary in the trust property whether it be to receive the income or corpus thereof cannot be transferred without the consent of the custodian.

Similarly

Similarly, a sole beneficiary competent to contract has, or several beneficiaries competent to contract and/of one a mind, have, a right to require the trustee to transfer the trust property to him or to them or to such person as he or they may direct. In the case of evacuee beneficiaries such right also would vest in the custodian and any transfer by the trustee bank at the request or by the direction of an evacuee beneficiary will not bind the custodian unless confirmed by him as provided by section 8 of the Bombay Evacuee Act.

Sd. P.M.Lad
30/9
Rememberancer of Legal Affairs.

U.R.to Rehabilitation Department, No.11027, dated the 30th September 1949.

MRP.
7/6/56.

From his application dated the 12th August 1949 at pages 24-27 in file ADM-24/33, it appears that Mr. Mohmedalli Hebathbhoy had left for Karachi in September 1947. In the statement made before the Collector he has stated that he came to Bombay on a temporary permit of two months. This shows that he left for Pakistan with a view to settling there. His case, therefore, falls under clause (b)(2) of section 2 of the Bombay Evacuees (Administration of Property) Act,1949. Further more, it appears from the Collector's report that the shop of Mr.D.K.Kapur in Lahore, which was declared as evacuee property under the Pakistan law, was allotted to Mr. Mohmedalli Hebathbhoy. His case, therefore, also falls under clause (b)(3) of section 2 of the Act. He is, therefore, an evacuee both under clauses (b)(2) and (b)(3) of section 2 of the Act.

2. From the Collector's report it appears that Mr.Mohmedalli Hebatbhoy to whom Mr.Kapur's shop is Lahore was allotted, started the firm of Messrs. G. Ziauddin Ltd., of which he became the Managing Director. His brother Tyaballi who is also a director of that Company owns 10 shares of Rs.100/- each in it. The company is a 'private limited' company. The members of a company collectively constitute the Company, and in the case of a company limited by shares the terms "member" and "share-holder" are synonymous (page 88 of Palmer's Company Law, 18th Edition). Under section 2(b)(3) of the Act an evacuee means a person who has, after the 1st day of March 1947, acquired in any manner whatsoever any right to, interest in, or benefit from, any property which

is

is treated as evacuee property under any law for the time being in force in Pakistan. The provisions of this clause are wide enough to include a shareholder in a company which has acquired any right to, interest in, or benefit from, an evacuee property in Pakistan. If the Company in question has acquired a right to, interest in, or benefits from Mr. Kapur's shop which has been declared as 'evacuee property' under the Pakistam law, a shareholder of this company will be equally deemed to have acquired such right to, interest in or benefit from the property. In this view Mr.Tayaballi is also an evacuee within the meaning of clause (b)(3) of section 2 of the Act.

Sd. J.R.Dhurandhar
13/10
Additional Secretary to Government.

U.R.to Rehabilitation Department , No.11470,
dated the 14th October 1949.

MRP.
7/6/56.

Office of the R&L:A.

Bom.Evacuees (Administration of Property) Act, 1949. Sec.2(b)(i).

The question whether the deceased Abdul Wahab Shaikh was an evacuee within the meaning of the Bombay Evacuees (Administration of Property) Act, 1949, is immaterial. What is material is whether his widow and children who claim succession to the two life insurance policies of the deceased, are evacuees under the Act. It is true that the deceased Abdul Wahab Shaikh had opted for Pakistan on the partition of the country and had gone over to Pakistan with his family. He could therefore be deemed to be a resident of Pakistan; but before the Bombay Evacuees (Administration of Property) Act, 1949, was passed, he died and his widow and children returned to the Bombay Province and they have now settled down at Bijapur which was the home of the deceased. A person's residence can be changed at any time and the fact that the deceased's widow and the children have settled down at Bijapur before the Bombay Evacuees (Administration of Property) Act was passed, clearly indicates that they have ceased to be the residents of Pakistan. Consequently, the Bombay Evacuees (Administration of Property) Act does not apply to the present case.

Sd. P.M.Lad
18/10
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department,No.11676, dated the 19th October 1949.

MRP.
7/6/56.

Office of the R.L.A.

Administration of Evacuee Property Ordinance, 1949.

Section 2(e)(iii).

The purchaser in the present case cannot be considered to be in unlawful occupation of the property in Pakistan, for even though the sale transaction has not been completed by a sale deedm the purchaser's possession can be justified on the ground of part performance (see section 53A of the Transfer of Property Act). He can however be considered to be an "intending evacuee" within the meaning of clause (e)(iii) of section 2 of the Administration of Evacuee Property Ordinance, 1949, as he had sought to exchange his property viz. ship plates and bulb angles with property in Pakistan.

Sd. P.M.Lad
20/11
Remembrancer of Legal Affairs.

U.R. to Rehabilitation Deptt., No.13250, dated the 21st November 1949.

MRP.
7/6/56.

Office of the R.L.A.

Administration of Evacuee Property Ordinance, 1949 - Sec.2(d) (iii).

Although it is doubtful whether Mr. Haji Mahomed would come within sub-clauses (i) and (ii) of clause (d) of section 2 of the Administration of Evacuee Property Ordinance, 1949, he would certainly come within sub-clause (iii).

Sd. P.M.Lad
26/11
Remembrancer of Legal Affairs.

U.R.to R.H.D.,No.13638, dated the 28th November 1949.

MRP.
7/6/56.

Office of the R.L.A.

Bombay Evacuees (Administration of Property) Act, 1949. Sections 4(2) and 2(b)(iii).

It appears that the property of one Mr. Mirza Yaha Mohamed Taqi situate at Kurla was notified as an evacuee property under section 4(2) of the Bombay Evacuees (Administration of Property) Act, 1949. He has now made a representation through the Counsul General for Iran that he is an Iranian subject and not an evacuee and as such his property should be released. In the inquiry it has transpired that he has been trying to sell his property and has actually entered into a contract to sell two immoveable properties which were not detected when the notification under section 4(2) was issued and have not, therefore, been taken over by the Custodian. He is an Iranian subject and has produced an Iranian passport from which it appears that it expired on 27.1.1949. He claims to be residing in India since 1915. He left for Karachi in October 1947 with intent to make it his home. He took Subhanawalla Restaurant in Karachi in that month in partnership with some one. He took (according to him, on rent) a house from a Punjabi Hindu in Karachi. Of his six children, two sons aged 19 and 11 are living in that house in Karachi. Three children are in Iran. One daughter aged 14 is with him in Bombay. He admits that his children went to Karachi with his sister in January 1948 and are kept there for schooling. The question raised for R.L.A's consideration is whether Mr. Mirza can be treated as an evacuee, and the other two properties which he has been now trying to dispose of can be notified under section 4(2) as

evacuee

evacuee properties or whether his property which has been already taken over by the Custodian should be released.

2. The nationality of Mr. Mirza is immaterial for purposes of applicability or otherwise of the Bombay Evacuee (Administration of Property) Act, 1949. Admittedly, he was residing in Bombay since 1915 and owns considerable property. He left for Karachi immediately after the partition of India in 1947 and made trips between Karachi and Bombay thereafter are also immaterial. But it appears from the evidence that he has taken up residence in Pakistan. The fact that he made occasional trips to Bombay is immaterial. As pointed out by Deputy Secretary, Rehabilitation Department, his present visit to Bombay is temporary. There is however another circumstance which requires consideration. It is undisputed that he has taken a house of a Punjabi Hindu in Karachi, and that Hindu appears to have evacuated Pakistan. According to Mr.Mirza he has taken that house on rent. Even assuming that he has been in occupation of that house on rent, he can be deemed to have acquired an interest in the property, which must evidently have been treated as an evacuee property in Pakistan. If so, sub-clause (iii) of clause (b) of section 2 will apply, and it is immaterial whether he has been residing now in Bombay and is in a position to supervise and manage his property. The Custodian may, therefore, notify the other two properties under section 4(2) which have been left out and which Mr. Mirza has been trying to dispose of.

Under

Under section 14(1) it would be open to Mr.Mirza to apply for the release of the property, and while restoring the property it would be competent for the Custodian to impose conditions. Consequently, if Mr. Mirza applies for restoration of the property on the ground that he has been residing in Bombay and is in a position to supervise the property, it would be open to the Custodian to restore it on condition that Mr. Mirza should not alienate the property without the permission of Government.

Sd. P.M.Lad
12/8
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department, No.9188, dated the 13th August 1949.

MRP.
7/6/56.

L.D.R.I.No.647-Confl.,dated 10-10-49.

Submitted.

Building known as Madhavrao Buildings, Kennedy Bridge, Bombay belonging to Bai Sofia Begum was notified by the Collector of Bombay as evacuee property. The monthly rent is stated to be about Rs.850/- out of which Rs.700/- has been recovered and he has carried out urgent repairs costing Rs.450/- to the staircase as per notice served by the Municipality. The Collector has received two notices from the Municipality to carry out repairs estimated to cost Rs.10,000/-. The buildings are stated to be very old. The buildings it appears ar subject to four mortgages the mortgages being (1) T.M.Kajini & Co. (2) Hatim H. Nakbuda (3) S.M.Kajiji and Co. (4) S.M.Kajiji and the amount due on mortgages by way of principal and interest is Rs.98,500/-. The mortgages are stated to be English mortgages under which the mortgagee is entitled to enter into possession without intervention of the Court. The municipal taxes amount to Rs.750/- to be paid six monthly and the interest on the mortgages is Rs.450/- p.m. The mortgages are willing to enter into possession of the property in accordance with the terms of the mortgage and effect the necessary repairs. The Collector points out that the property will not be able to hear all this expenditure including the collection charges. He therefore requests for Government sanction to hand over this property to the mortgages or to indicate what steps may be taken in the matter. Joint Secy., R.H.D. is in favour of handing over the property to the mortgagees. The R.L.A. is requested to advise in the matter. x x x x

x x x x

Sd. P.S.Nadkarni
29/11

A.L.R.

A
– I agree. Papers may be seen and returned.
A

Id. R.T.K.
29/11.

R.L.A. A – A

Id. P.M.L.
29/11

U.R.to R.H.D.,No.13867, dated 1-12-1949.

MRP.
7/6/56.

Office of the R.L.A.

The provisions now applicable are those of the Administration of Evacuee Property Ordinance, 1949. Mrs. Tehmina is an evacuee within the meaning of section 2(d)(ii) and the Government Securities and cash held by the Accountant General on her behalf constitute the evacuee property within the meaning of section 2(f) of the Ordinance as she is unable to manage the property in person.

Sd. P.M.Lad
29/11
Remembrancer of Legal Affairs.

U.R.to R.H.D.,No.13799, dated the 30th November 1949.

MRP.
7/6/5 6.

Office of the R.L.A.

Administration of Evacuee Property Ordinance, 1949.

Secs.12(b) 1D, (2), (3), 24, 25.

The view taken by the Joint Secretary, R.H.D. is prima facie correct. The power to entertain such applications no longer vests in Government. The attention of the Solicitors may be invited to sec.25 read with the proviso to section 24 of the Administration of Evacuee Property Ordinance, 1949.

Sd. P.N.Lad
3/12
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Deptt., No.760-Confl., dated the 6th December 1949.

MRP.
7/6/56.

Office of the R.L.A.

It appears that properties bearing house Nos.608, 608A at Sachapeer Street, house No.899 at Buttee Road and house No.832 at Dastoor Meher Road in Poona stand in the name of Mrs. Gowherbai Munwaralli who died in 194[illegible] leaving behind her three daughters (1) Mumtaz Begum, (2) Naznin Begum and (3) Iqbal Begum. The first two are living with Mr.Khan the eldest Mumtaz Begum being his wife. The third daughter Iqbal Begum left Poona in August 1948 and went to Karachi and is now married to the Inspector General of Police at Dacca. It is alleged by Mr. Khan that the property bearing house No.608 belongs to him as the land below it was gifted to him by his mother-in-law and the building was constructed by him at his own expense in 1938. Since then it has been in his possession. In the other three properties Iqbal Begum has a share which she is alleged to have gifted to her two sisters Mumtaz Begum and Naznin Begum before leaving Poona in August 1948. Mumtaz Begum and Naznin Begum are living with Mr.Khan. On these facts the Rehabilitation Department has come to the conclusion that in view of section 38 of the Administration of Evacuee Property Ordinance, 1949 the transfer of her share by Iqbal Begum was illegal and consequently her share in properties bearing house Nos.899 and 832 should be declared evacuee property; while the properties bearing house Nos.608 and 608A seem to belong to Mr.Khan in respect of which however an inquiry under section 7 should be held. The R.L.A. is requested to advise.

It appears from the statement of Mr. Khan at

p.5 ante that he claims the property bearing house No.608 only. The other properties will have, therefore, to be undoubtedly considered as belonging to three daughters of Mrs. Gowherbai. Of these three daughters Iqbal Begum who left Poona in August 1948 would therefore be considered an evacuee within the meaning of the Ordinance. Section 38, subsection (1) provides: "No transfer of any right or interest in any property made in any manner whatsoever after the 14th day of August 1947 by or on behalf of an evacuee or by or on behalf of a person who has become an evacuee after the date of the transfer, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian." Under sub-section (2) an application for confirmation of such transfer shall be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months after the commencement of this Ordinance. It is clear from these provisions that the crucial date to determine the validity or invalidity of the transfer is the 14th day of August 1947. From the papers forwarded to the Legal Department it is not clear when Iqbal Begum is alleged to have made an oral gift of her share in the properties to her two sisters i.e. whether before or after 14th August 1947. It is presumed that no application has been made under section 38, sub-section (2) to the Custodian so far. The period of two months has not expired. In the circumstances it would not therefore be possible to say at this stage whether the transfer of the share of Iqbal Begum in the properties bearing house No.608A, 809 and 832 could be considered ineffective under section 38. The Custodian may, therefore, hold an inquiry under

under section 7 and decide whether the alleged oral gift is proved and whether it was before or after the 14th day of August 1947.

So far as the property bearing house No.608 is concerned, it appears that Mr. Khan built the house at his own expense in 1938 while his mother-in-law was alive but the mutation has not so far been effected and the property still stands in the name of Mrs. Gowherbai. It will be for him to prove the gift and an inquiry under section 7 may therefore be held in respect of this property.

Under Mohmedan Law which is saved by section 129 of the Transfer of Property Act, oral gift ~~apart~~ of immoveable property would be valid even without a registered deed provided there is delivery of possession of such property. Consequently the fact that there is no gift deed in support of the gift of the plot to Mr.Khan or the gift of the share of Iqbal Begum in other properties to her sisters would not by itself be enough to disprove the gift as even otherwise the gift could be valid.

Sd. P.M.Lad
8/12
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department, No.766-Confl., dated the 9th December 1949.

MRP.
7/6/56.

Office of the R.L.A.

Administration of Evacuee Property Ordinance, 1949.

Sec. 2(d),(f) & (i).

Mr. Waters is an evacuee within the meaning of section 2(d) of the Administration of Evacuee Property Ordinance, 1949, and the shares of the Joint Stock Company owned by him are "evacuee property" as defined in clause (f) read with clause (i) of section 2, although they are lodged by him with the bank for safe custody.

Sd. P.M.Lad
10/11
Remembrancer of Legal Affairs.

U.R.to R.H.D.,No.12,706, dated the 10th ~~May~~ November 1949.

MRP.
7/6/56.

Office of the R.L.A.

Strictly speaking, Government is not bound to hear any aggrieved party before deciding the question under Explanation to section 2 clause (b). However, if an aggrieved party asks for a hearing it is desirable that Government should hear him before ~~it is~~ deciding the matter.

Sd. P.M.Lad
6/9
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department
No.564-Confl., dated the 6th September 1949.

MMP.
7/6/56.

R.I.No.16190,
5-10-1949.

Submitted.

It appears that Mr. Iftikharuddin Haji Chiraguddin and his mother, Mahommedunissa, partners in the firm of Chiraguddin & Sons, appollo Bunder, Bombay were declared as evacuees and their property is notified as evacuee property. Both he and his ~~xx~~ mother, who are partners in this firm were residents of Bombay but they both left for Western Pakistan sometime early in 1948. The mother is still there while Mr. Chiraguddin came to India on a temporary permit 12 moths later, returned to Pakistan after 2 or 3 months and has come back for the second time on a temporary permit. The visit early in 1948 is stated to have been in connection with certain family affairs but the the Joint Secretary R.D. is of the view that the prolonged stay in Western Pakistan must be held to throw an entirely different light on the situation. He states that his present desire to resettle in India must be ~~x~~ looked at in the context of the position now as regards evacuee property and that it is certain that the Government of India will not allow him to return permanently. He is therefore of the view that his leaving was connected with the partition of the country (se.2(b)(1) of the Bombay Evacuees (Administration of Property) Act, 1949) and that since they are both residents of Pakistan sec.2(b)(2) of that Act would be attracted and therefore they were rightfully declared as evacuees. The ~~x~~ R.L.A. is requested to advise in the matter.

2. Mr. Chiraguddin has already declared himself as a Pakistani national in his application to the

High

High Commissioner for India in Karachi and in view of this he can come to Indian only on temporary permits. His tailoring shop in Bombay is being managed by his manager during his absence. It is therefore clear that he could not carry on his business personally, within the meaning of clause (b)(2) of sec.2 of the Bombay Evacuees (Administration of Property) Act, 1949 as amended by the Bombay Ordinance No.II of 1949. The fact that both he and his mother left India for Pakistan early in 1948 and that he alone returned to India after a lapse of one full year so to show that they left the Province of Bombay "on account of civil disturbances or the fear of such disturbances", within the meaning of sec.2(b)(1). Since his business is now managed by his manager sec.2(b)(2) would be attracted. It appears therefore that these two persons x were rightly declared as evacuees. They would not be considered as evacuees under clause (d)(i) and (ii) of section 2 of the Administration of Evacuees Property Ordinance, 1949.

Sd. P.S.Nadkarni
22/11

A.L.R.

As in para.2 of Mr.Nadkarni's note

Id. R.T.K.
22/11

R.L.A.

I shall feel obliged if Additional Secretary kindly disposes of this case.

Id. P.M.L.
22/11

I agree with A.L.R.

Id. J.R.D.
24/11.

MRP
7/6/56.

Office of the R.L.A.

Whether minors leaving Province for studies are evacuees.

Bombay Evacuees (Administration of Property) Act, 1949. Sec.2(b).

The five miniors in the present case would be considered evacuees within the meaning of sub-clause (1) of clause (b) of section 2 of the Bombay Evacuees (Administration of Property) Act, 1949 only if it can be proved that they left Bombay on account of disturbances or fear of such disturbances or partition of the Country. It is alleged that these minors have been staying in Karachi for study. If this is true then clause (b) will have no application. Admittedly another minor and their mother and brother are staying in Bombay. If the fear of Civil disturbances was the cause of the five minors leaving their residence in Bombay, there was no reason why the 6th minor also should not have left Bombay for the same reason. The whole family has not shifted to Karachi, and consequently, it is doubtful whether these minors can be considered evacuees within the meaning of sub-clause (1) of clause (b) of section 2.

For the purposes of sub-clause (2) what is necessary is that the person must not be a resident in the province and on account of civil disturbances or the fear of such disturbances, or the partition of the country must not be able to personally occupy or supervise his property or carry on his business or watch his interests or enforce his rights within the Province. The minors are not residing in the Province of Bombay. The only question material would, therefore, be whether they have been unable to supervise the property personally. Under clause (d) 'personal supervision' is defined as meaning supervision or carrying on business or watching or enforcing as the case may be under one's personal presence or by agents or servants under one's personal presence in the

Province -

the Province. Explanation to that clause provides that if a person is a widow or a minor ... such person shall be deemed to supervise the property or to carry on his business or to watch his business or to enforce his rights personally if such supervision is made by the agent or guardian of the person duly recognised in this behalf by the Provincial Government or by such officer as the Provincial Government may authorise in this behalf. Bai Khatizabai and Abdul Rehman, mother and brother respectively of the minors have been appointed by an order of the High Court dated the 6th October 1944, guardians of the person and property of these minors, and Abdul Rehman, if appears, has been managing the property. It is true that those minors have left the jurisdiction of the High Court and thereby the Guardians have rendered themselves liable for a penalty under section 44 of the Guardian and Wards Act, but such removal of the minors from the jurisdiction of the High Court would not involve cessation of the authority of the guardian to manage the property. (See section 41 of the Guardians and Wards Act). Consequently, the management of the proprty of the minors by their guardians appointed by the High Court is valid notwistanding the fact that the minors are now in Karachi. To avoid a conflict with the order of the High Court Government may recognize the guardians appointed by the High Court under the explanation to clause (b) of section 2 of the Bombay Evacuees (Administration of Property) Act, 1949.

Sd. P.K.Lad
9/9
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department No.576-Confl.,
dated the 10th September 1949.

MRP.
8/6/56.

Office of the R.L.A.

Bombay Evacuees (Administration of Property) Act, 1949.

Administration of Evacuee Property Ordinance, 1949.

Sections 2(f), 4,7,8,10(2)(n) and 13.

The Bombay Evacuees (Administration of Property) Act, 1949, has been repealed by the Administration of Evacuee Property Ordinance, 1949, recently issued by the Central Government. However, actions taken under the repealed Act have been saved. The question whether or not the persons whose property is being looked after under the orders issued by the High Court and to whom allowances are paid by the Accountant General are evacuees is not to be determined by the Accountant General. Under the Ordinance, it is for the Custodian who has to notify after holding necessary enquiries declaring that the property is evacuee property. Once the property is determined evacuee property, it vests in the Custodian under section 8 of the Ordinance. It would be for the Custodian under section 10(2)(n) to pay to the evacuee or any member of his family or to any other person as in the opinion of the Custodian is entitled thereto any sums of money out of the funds in his possession. Under section 13 payments to the Custodian would be valid discharge of the x liability. Under section 4 the Ordinance override other laws. Reading these provisions together, the Accountant General should await the passing of any order declaring the property to be evacuee property under section 7. Upon a declaration so made, the Accountant General would nd be justified in making any payment to the minor or beneficiary or trustee concerned. He should bring it to the notice of the High Court and seek orders.

The definition of "evacuee property" as contained in clause (f) read with clause (i) of section 2 of the Ordinance does not include deposits in the bank.

Sd. P.M.Lad
3/11.
Remembrancer of Legal Affairs.

MRP.
8/6/56.

U.R.to Rehabilitation Deptt.,No.696-Confl.,dated 12-11-1949.

Alice A the R.L.A.

In my opinion the principle of ejusdem generis has been wrongly applied in this case. The principle is thus explained in Maxwell on Interpretation, 9th edition, p.337: "The general word which follows particular and specific words of the same nature as itself takes its meaning from them and it is presumed to be restricted to the same genus as those words." Unless there is a genus or category, there is no room for the application of the principle. The words "contract of loan" do not constitute a genus or a class. Even if they were held to comprise a category, the words "otherwise howsoever" must be given their proper meaning. The general word is to be read as comprehending only things of the same kind as those designated by the preceding words, unless, of course, there will be something to show that a wider sense was intended. That wider sense is intended can be easily seen from the expression "howsoever" which is used for the purpose of embracing all possible cases. The restricted meaning which primarily attaches to a general word in such context is rejected when there are grounds to show that it has not been used in the limited order of ideas to which its predecessors belong. Thus in the expression "by circulars advertisements or otherwise" appearing in the Patents, Designs and Trademarks Act, 1883, the word "otherwise" was treated as extending the previous words so as absolutely to prohibit any threats whatever of legal proceedings. Similarly where a special Act passed in 1767 authorised the owner of a bridge to take a toll on every coach, chariot, ... or other carriage whatsoever, the ejusdem generis principle was not applied, and on the ground that the Legislature intended every vehicle passing

over

passing over the bridge to pay a toll, a bicycle was held to be a carriage within the Act (Maxwell pp.342-43). In this case, therefore, the expression "otherwise howsoever" leaves no scope for the application of the ejusdem generis principle and every sum payable in any manner would fall within the scope of the provision. The Government Solicitors may, therefore, be instructed to take proceedings contesting the order passed by the Chamber Judge.

Sd. P.M.Lad
20/9/49
Remembrancer of Legal Affairs.

U.R.to R.H.D.,No. 10657, dated the 20th November 1949.

MRP.
8/8/ 49.

Office of the R.L.A.

Administration of Evacuee Property Ordinance, 1949.

Sections 2(f), 7, 8 and 38.

Government securities, industrial shares and other documents held by the Bank in safe custody account in the names of four persons deliverable to any one or two of them , one or two of them being residents in Pakistan and the others being in India, are evacuee property within the meaning of section 2(f) of the Administration of Evacuee Property Ordinance, 1949, inasmuch as those residing in Pakistan, being evacuees, are interested in this property. This property would vest in the Custodian when it is declared to be evacuee property (see section 8). Pending such determination, no transfer of evacuee property would be permissible (see section 7(2)). Under section 38, no transfer of any right or interest in any property made in any manner whatsoever after the 14th day of August 1947 by or on behalf of an evacuee or by or on behalf of a person who has become an evacuee after the date of the transfer shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian. Even though the aforesaid property stands in the joint names of the evacuees as well as non-evacuees, no transfer of such property would be permissible under section 38 even if it be at the instance of the non-evacuees who ordinarily have directed such transfer without the consent of the evacuees. Consequently, the view expressed in para. 7 of the draft at p.27 ante that the Bank can act on the instructions of the

latter

the latter (non-evacuees) even though the original joint instructions to the Bank are to act on the instructions of any of the parties does not appear to be correct.

Subject to the aforesaid objections, the view expressed in the draft letter at page 27 ante is correct.

Sd. P.M.Lal
17/11
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department, No.13124,
dated the 18th November 1949.

MRP.
8/6/56.

Office of the R.L.A.

Administration of Evacuees Property Ordinance, 1949.

Sections 7,24,25.

In view of the Bombay Evacuee (Administration of Property) Act, 2 1949, being repealed by the Administration of Evacuees Property Ordinance, 1949, the decision of Government either under Explanation to clause (b) of section 2 or under Explanation to clause (d) of section 2 of the former Act would not appear to be necessary. By virtue of section 55 sub-section (3) of the Administration of Evacuees Property Ordinance, the notification issued by the Bombay Government under the Bombay Evacuees (Administration of Property) Act, 1949, would be deemed to have been issued under the Ordinance and the property would continue to vest in the Custodian under section 8 of that Ordinance as if the Ordinance were in force on the date on which the property was vested. Consequently, the provisions of the Ordinance would now apply.

Under the proviso to section 24 of the Ordinance an appeal on the ground that the ~~person~~ person aggrieved is not an evacuee within the meaning of sub-clause (iii) of clause (d) of section 2; or the property is not an evacuee property within the meaning of sub-clause (2) of clause (f) of section 2, shall be preferred in the manner prescribed in section 25. Section 25(1) provides that any person aggrieved by an order:- (a) under section 7 notifying his property as 'evacuee' property on the ground that he is an evacuee within the meaning of subclause (iii) of clause (d) of section 2 of that the property is 'evacuee' property within the meaning of sub-clause (2) of clause (f) of section 2; or (b) under section 22

declaring ...

declaring any property of an intending evacuee to be 'evacuee property', may/prefer an appeal in x such manner and within such time as may be prescribed to the District Judge designated in this behalf by the Provincial Government. Sub-section (2) provides that for the purposes of hearing an appeal under sub-section (1), the Provincial Government shall designate one or more District Judges and define the local limits of their jurisdiction.

In all the four applications made by Mr. Abdul Jalil Shaikh Ahmed, the main contention raised is that the property is not evacuee property and that the owners are not evacuees. These applications will, therefore, have to be treated as appeals against the orders passed under section 7 and they would lie to the District Judge designated in this behalf by the Provincial Government. Consequently, these applications may be dismissed and Mr. Abdul Jalil Shaikh Ahmed, may be directed to ~~xxxxxx~~ appeal, if he is so advised, under section 25 of the Ordinance.

Sd. P.M.Lad,
26/11
Remembrancer of Legal Affairs.

U.R.to Rehabilitation Department, No.13626,
dated the 28th November 1949.

MRP.
8/6/56.